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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

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13 PROFESSIONAL'S CHOICE
14 SPORTS MEDICINE PRODUCTS,
INC.,

15 Plaintiff,

16 v.

17 JENNIE HEGEMAN, et al.,

18 Defendants.
19
20

Case No. 15-cv-02505-BAS(WVG)

**ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION**

[ECF No. 6]

21 Plaintiff Professional's Choice Sports Medicine Products, Inc.
22 ("Professional's Choice") files this suit alleging violations of the Lanham Act for
23 product disparagement, unfair competition under California state law, common law
24 product disparagement/trade libel and defamation against Jennie Hegeman and Jen
25 X Equine, Inc. (ECF No. 1.) Plaintiff claims Hegeman made false statements
26 against it when she posted statements about products sold by Professional's Choice
27 on her Facebook page. Defendants move to dismiss claiming the Court has no
28 personal jurisdiction over them. In the alternative, Defendants request a change of

venue to Utah. The Court finds this motion suitable for determination on the papers submitted and without oral argument. See Civ. L.R. 7.1(d)(1). For the reasons below, the Court **GRANTS** Defendants' Motion to Dismiss. (ECF No. 6.)

I. TIMELINESS OF MOTION

As a preliminary matter, Plaintiff correctly points out that Defendant Jen X Equine, Inc.'s Motion to Dismiss is untimely. Plaintiff served Jen X Equine, Inc. on November 5, 2015. (ECF No. 8-13.) Under Rule 12(a)(1)(A), a responsive pleading was due November 27, 2015. Fed. R. Civ. P. 12(a)(1)(A) (a defendant must serve an answer within 21 days after being served with the summons and complaint); *see also* Fed. R. Civ. P. 6(a)(1) (continuing period to respond until next day if the last day is a legal holiday). Plaintiff served Defendant Jennie Hegeman, the sole owner of Jen X Equine, Inc., on November 21, 2015. (ECF No. 8-13.) Her responsive pleading was due December 14, 2015. Fed. R. Civ. P. 12(a)(1)(A). On December 11, 2015, Defendants filed this Motion to Dismiss. (ECF No. 5.) Hence, it was timely filed for Hegeman but not for her company, Jen X Equine.

Under Rule 6(b)(1), when an act may or must be done within a specified time, the court may, for good cause, extend the time, if the party failed to act because of excusable neglect. Fed. R. Civ. P. 6(b)(1)(B). Since Hegeman is acting pro per, the Court will liberally construe her Motion to Dismiss, filed timely on her own behalf, as a Motion to extend the time for her one-woman company to move to dismiss as well. The Court finds the failure to file a responsive pleading timely was because of excusable neglect. In her Motion, Hegeman indicates that she runs her company out of her basement and that she is the sole owner of the company. Furthermore, since she filed the Motion to Dismiss on her own behalf in a timely fashion, the Court finds no prejudice accrues to the Plaintiff if the Court extends the time for Jen X Equine to file.

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II. STATEMENT OF FACTS

Professional's Choice sells equine sports medicine products. (ECF No. 1 ¶9.) Hegeman operates a business making and selling horse saddle pads. (ECF No. 6 ¶3.) Hegeman has been operating the business, called Jen X Equine, out of her basement first in Oregon and now in Utah for about a year. (ECF No. 6 ¶2.) Although Hegeman lived briefly in California in 2008, she was not operating her business at that time. (ECF No. 6 ¶5.)

Hegeman has a web site for her business. (Declaration of Michele Scott, ECF No. 8-1 "Scott Dec," Exh. 1, ECF No. 8-3; ECF No. 1 ¶23.) People who want to purchase saddle pads from Jen X Equine contact her directly via telephone in Utah. (ECF No. 6 ¶4.) They can then pay for their orders via Paypal on the Internet through her web site. (ECF No. 6 ¶4; Scott Dec, Exh. 1.) Hegeman has occasionally shipped saddle bags ordered via telephone in Utah to California. (ECF No. 6 ¶4.) Hegeman claims she has "never reached out to contact directly anyone in the state of California to market, sell, design, develop or manufacture [her] products." (ECF No. 6 ¶4.)

The web site for Jen X Equine contains a link to Hegeman's Facebook page, "The Truth Tack Review." (Scott Dec., Exhs. 2 & 3, ECF Nos. 8-4 and 8-5.) On this page, Hegeman reviews competitor's products, including three products she purchased from Professional's Choice. (ECF No. 11 ¶5.) Hegeman says the three products she reviewed were all purchased in the state of Utah. (ECF No. 11 ¶5.) Professional's Choice claims the Facebook reviews contain false statements. (ECF No. 1 ¶23.)

Professional's Choice alleges this Court has personal jurisdiction over the Defendants because they directed their wrongful actions at a business in Southern California thereby causing foreseeable injury in this jurisdiction, (ECF No. 1 ¶¶4-5), and because they "manufacture, market, advertise, sell and ship competitive products to consumers and businesses in the Southern District of California," (ECF No. 1 ¶7).

1 III. ANALYSIS

2 When the parties dispute whether personal jurisdiction over a foreign
 3 defendant is proper, “the plaintiff bears the burden of establishing that jurisdiction
 4 exists.” *Rios Props. Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002).
 5 In ruling on the motion, the “court may consider evidence presented in affidavits to
 6 assist in its determination and may order discovery on the jurisdictional issues.” *Doe*
 7 *v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). Where the motion is based on
 8 written materials rather than an evidentiary hearing, the plaintiff need only make “a
 9 prima facie showing of jurisdictional facts to withstand the motion to dismiss.”
 10 *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010)
 11 (quoting *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006)). “In
 12 determining whether the plaintiff has met this burden, the Court must take the
 13 allegations in the plaintiff’s complaint as true and resolve the disputed jurisdictional
 14 facts in the plaintiff’s favor.” *Nissan Motor Co., Ltd. v. Nissan Computer Corp.*, 89
 15 F. Supp. 2d 1154, 1158 (C.D. Cal. 2000) (citing *Ziegler v. Indian River Cnty.*, 64
 16 F.3d 470, 473 (9th Cir. 1995)). A prima facie showing means that “the plaintiff need
 17 only demonstrate facts that if true would support jurisdiction over the defendant.”
 18 *Unocal*, 248 F.3d at 922.

19 “The general rule is that personal jurisdiction over a defendant is proper if it
 20 is permitted by a long-arm statute and if the exercise of that jurisdiction does not
 21 violate federal due process.” *Pebble Beach Co. v. Caddy*, 453 F.3d at 1154. Both
 22 the California and federal long-arm statutes require compliance with due-process
 23 requirements. *Daimler AG v. Bauman*, __U.S.__, 134 S. Ct. 746, 753 (2014); *see*
 24 *also* Fed. R. Civ. P. 4(k)(2); *Holland Am Line Inc. v. Wärtsilä N. Am., Inc.*, 485 F.3d
 25 450, 461 (9th Cir. 2007); *Pebble Beach*, 453 F.3d at 1155.

26 There are two types of personal jurisdiction: general and specific. *See*
 27 *Daimler AG*, 134 S. Ct. at 754-55. “Since *International Shoe*, ‘specific jurisdiction
 28 ‘has played’ a reduced role.” *Daimler AG*, 134 S. Ct. at 755 (quoting *Goodyear*

1 *Dunlop Tires Operations, S.A. v. Brown*, __U.S.__, 131 S. Ct. 2846, 2854 (2011)).
 2 General jurisdiction “enables a court to hear cases unrelated to the defendant’s forum
 3 activities[.]” *Fields v. Sedgewick Assoc. Risks, Ltd.*, 796 F.2d 299, 310 (9th Cir.
 4 1986). Specific jurisdiction allows the court to exercise jurisdiction over a defendant
 5 whose forum-related activities gave rise to the action before the court. *See Bancroft*
 6 *& Masters, Inc. v. August Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000).

7 8 **A. General Jurisdiction**

9 “A court may assert general jurisdiction over foreign (sister-state or foreign-
 10 country) corporations to hear any and all claims against them when their affiliations
 11 with the State are so ‘continuous and systematic’ as to render them essentially at
 12 home in the forum State.” *Goodyear*, 131 S. Ct. at 2851 (citing *International Shoe*
 13 *Co. v. Washington*, 326 U.S. 310, 317 (1945)). “With respect to a corporation, the
 14 place of incorporation and principal place of business are ‘paradig[m]...bases for
 15 general jurisdiction.’” *Daimler AG*, 134 S. Ct. at 760 (quoting *Goodyear*, 131 S. Ct.
 16 at 2853-54). “These bases afford plaintiff recourse to at least one clear and certain
 17 forum in which a corporate defendant may be sued on any and all claims.” *Id.*

18 In assessing the substantiality of a defendant’s contacts with a state, courts
 19 examine the “[l]ongevity, continuity, volume, [and] economic impact” of those
 20 contacts, as well as the defendant’s “physical presence...and integration into the
 21 state’s regulatory and economic markets.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*,
 22 647 F.3d 1218, 1224 (9th Cir. 2011). A corporation’s “continuous activity of some
 23 sorts within a state is not enough to support the demand that the corporation be
 24 amenable to suits unrelated to that activity.” *International Shoe*, 326 U.S. at 318.
 25 “Although the placement of a product into the stream of commerce ‘may bolster an
 26 affiliation germane to *specific* jurisdiction,’ [the Supreme Court] has explained, such
 27 contacts ‘do not warrant a determination that, based on those ties, the forum has
 28 *general* jurisdiction over a defendant.’” *Daimler AG*, 134 S. Ct. at 757 (citing

1 *Goodyear*, 131 S. Ct. at 2857). Although Plaintiff does not make an argument that
2 general jurisdiction exists over the Defendants, it does make a request for discovery,
3 since “Defendants have not divulged the percentage of profits derived from
4 California.” (ECF No. 8, pg. 12-13.) Plaintiff seeks discovery “to establish proper
5 general jurisdiction based on business ties if the Court is not convinced by the
6 submitted evidence.” (*Id.*)

7 A district court may grant discovery in the context of personal jurisdiction
8 “where pertinent facts bearing on the question of jurisdiction are controverted or
9 where a more satisfactory showing of the facts is necessary.” *Boschetto v. Hansing*,
10 539 F.3d 1011, 1020 (9th Cir. 2008). The court is under no obligation to order
11 discovery when the request is based on “little more than a hunch that it might lead
12 to jurisdictionally relevant facts.” *Id.* (citing *Butcher Union Local No. 498 v. SDC*
13 *Inv. Inc.*, 788 F.2d 535, 540 (9th Cir. 1986) (holding that district court did not abuse
14 its discretion by refusing jurisdictional discovery where the plaintiffs state only that
15 they ‘believe’ discovery will enable them to demonstrate sufficient California
16 business contacts to establish the court’s personal jurisdiction)).

17 In this case, Plaintiff does not allege that Jen X Equine Inc. is either
18 incorporated in or has its principal place of business in California. (Complaint ECF
19 No. 1 ¶15.) Plaintiff also does not allege that Hegeman resides in, or at any time
20 mentioned in the Complaint resided in, California. (Complaint ¶14.) Plaintiff does
21 not suggest that Defendants pay taxes in California or have an agent for service of
22 process in California. In fact, Plaintiff does not contest Hegeman’s claim that she is
23 basically a one-woman operation who sells saddle pads out of the basement of her
24 house in Utah. There is nothing that would support any realistic belief that the Court
25 has general jurisdiction over this company, and any request for discovery is based
26 on nothing more than a hunch that it might lead to jurisdictionally relevant facts.
27 The request for discovery is denied.
28

1 **B. Specific Jurisdiction**

2 The Ninth Circuit employs a three-part test to determine whether the
3 defendant's contacts with the forum state are sufficient to subject it to specific
4 jurisdiction. *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). Under the three-
5 part inquiry, specific jurisdiction exists only if: (1) the out-of-state defendant
6 purposefully availed itself of the privilege of conducting activities in the forum,
7 thereby invoking the benefits and protections of the forum's laws; (2) the cause of
8 action arose out of the defendant's forum-related activities; and (3) the exercise of
9 jurisdiction is reasonable. *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1072 (9th
10 Cir. 2001).

11 The plaintiff bears the burden of satisfying the first two prongs of this specific
12 jurisdiction test. *Schwarzenegger v. Fred Martin Motor Co*, 374 F.3d 797, 802 (9th
13 Cir. 2004). "If the plaintiff succeeds in satisfying both of the first two prongs, the
14 burden then shifts to the defendant to 'present a compelling case' that the exercise
15 of jurisdiction would not be reasonable." *Id.*; *see also Ziegler*, 64 F.3d at 476 ("Once
16 purposeful availment has been established, the forum's exercise of jurisdiction is
17 *presumptively reasonable*. To rebut that presumption, a defendant must present a
18 *compelling* case that the exercise of jurisdiction would, in fact, be unreasonable.")
19 (quotations omitted) (emphasis original). "If any of the three requirements is not
20 satisfied, jurisdiction in the forum would deprive the defendant of due process of
21 law." *Pebble Beach*, 453 F.3d at 1155.

22 **1. Purposeful Availment**

23 "In the defamation context, the United States Supreme Court has described an
24 'effects test' for determining purposeful availment." *Pavlovich v. Superior Court*,
25 29 Cal. 4th 262, 269 (2002) (citing *Calder v. Jones*, 465 U.S. 783 (1984)). *Calder*
26 involved a libel action in California state court filed by well-known Hollywood
27 actress Shirley Jones against a reporter and editor of the "National Enquirer,"
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1 headquartered in Florida. The article was written and edited by the defendants in
2 Florida for publication in this national weekly newspaper with a circulation in
3 California of roughly 600,000. 465 U.S. 783. The defendants made telephone calls
4 to their sources in California in order to write about Jones' activities in California.
5 The injuries to Jones were largely caused in California when the newspaper was
6 widely circulated in that state. The Court found the defendants had purposely
7 availed themselves of the privilege of conducting activities in the forum state and
8 thus personal jurisdiction was appropriate. *Id.*

9 However, the U.S. Supreme Court in *Walden v. Fiore*, __U.S.__, 134 S. Ct.
10 1115 (2014) clarified the holding in *Calder* pointing out that the analysis looks at
11 the defendant's contacts with the State itself not the defendant's contacts with the
12 persons who reside there. *Id.* at 1122. Thus, the Court in *Walden* reversed the
13 appellate court which had looked at the defendant's knowledge of the plaintiff's
14 "strong forum connections" rather than assessing the defendant's contacts with the
15 forum state. *Id.* at 1124. "[Defendant's] actions in [his home state] did not create
16 sufficient contacts with [the forum state] simply because he allegedly directed his
17 conduct at Plaintiffs whom he knew had [forum state] connections." *Id.* at 1125; *see*
18 *also Pavlovich v. Superior Court*, 29 Cal. 4th 262, 270-71 (2002) ("[M]ost courts
19 agree that merely asserting that defendant knew or should have known that his
20 intentional acts would cause harm in the forum state is not enough to establish
21 jurisdiction under the 'effects test.'") Instead, a plaintiff must point to contacts
22 which demonstrate that the defendant "*expressly aimed* its tortious conduct at the
23 forum." *Id.* (quotations omitted) (emphasis original). The plaintiff must establish
24 more than the defendant's knowledge that his tortious conduct may harm certain
25 industries centered in the forum state. *Pavlovich*, 29 Cal. 4th at 274.

26 In the internet context, "the likelihood that personal jurisdiction can be
27 constitutionally exercised is directly proportionate to the nature and quality of
28 commercial activity that an entity conducts over the Internet." *Cybersell, Inc. v.*

1 *Cybersell, Inc.*, 130 F.3d 414, 419 (9th Cir. 1997) (citing *Zippo Mfg. Co. v. Zippo*
 2 *Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997)). “A passive web site that
 3 does little more than make information available to those who are interested is not
 4 grounds for the exercise of personal jurisdiction.” *Pavlovich*, 29 Cal. 4th at 272.

5 Plaintiff makes six arguments claiming Defendants have “purposefully
 6 availed” themselves of the forum in Southern California: (1) Hegeman made false
 7 statements targeting a company that was based out of California; (2) Defendants
 8 market and sell their products through an interactive web site allowing customers to
 9 purchase the product using Paypal, which is based out of California; (3) Defendants’
 10 web site is “directly used for financial gain in California;” (4) “Defendants were
 11 likely fully aware that Professional’s Choice would be harmed in California”
 12 because Hegeman professes to know about the big companies who create and design
 13 equestrian products; (5) Plaintiff sent a cease and desist letter from California,
 14 therefore, Defendants knew at that point they were dealing with a California
 15 company; and (6) “San Diego County is home to the second largest horse-racing
 16 venue in the western United States, the Del Mar racetrack and this region is a vital
 17 part of the equestrian community. Defendants, as former San Diego residents, were
 18 likely aware that their disparaging comments would affect Professional’s Choice’s
 19 business in San Diego.” (ECF No. 8.)

20 To the extent Plaintiff argues that Defendants directed their conduct at
 21 Professional’s Choice, which had strong ties to California, and that Defendants
 22 “were likely fully aware” this would lead to harm of Professional’s Choice in
 23 California, this is insufficient. *See Walden*, 134 S. Ct. at 1125 (concluding simply
 24 directing conduct at a plaintiff who defendant knew had forum state connections is
 25 insufficient); *Pavlovich*, 29 Cal. 4th at 270. Even the allegation that Defendants
 26 knew Professional’s Choice sent a cease and desist letter which put Defendants on
 27 notice that they had an office in San Diego is insufficient. *Id.* Plaintiff is focusing
 28 on its actions and its contacts, not Defendants’ contacts with the forum state.

1 With respect to the allegations that Defendants ran an interactive web site that
 2 sold goods which could be bought by individuals in California, first the offending
 3 conduct did not occur on the interactive web site, it occurred on a separate Facebook
 4 page. The fact that the web site referenced this Facebook page does not change the
 5 fact that the Facebook page was, in essence, a passive posting of information
 6 available for all to see. Furthermore, even the interactive web site required an
 7 individual to place an order via telephone with Defendants' Utah-based company.
 8 Plaintiff fails to provide any support for its claim that Defendants targeted, marketed,
 9 or directed its web site activities in any way at California. Nor does the fact that
 10 Defendants used Paypal, a California based company, to allow customers to pay via
 11 credit card, convey jurisdiction on this court. Allowing California to have
 12 jurisdiction over every internet business that uses Paypal would be a clear violation
 13 of due process. *IO Group, Inc. v. Pivotal, Inc.*, no. C03-5286 MHP, 2004 WL
 14 838164 (N.D. Cal. April 19, 2004), cited by Plaintiff to the contrary, merely holds
 15 that the use of Paypal demonstrates a high level of interactivity for the web site, not
 16 that the use of a California-based third party payor conveys jurisdiction on
 17 California.

18 Finally, the fact that there is a racetrack in Southern California and many avid
 19 equestrians does not mean that every statement about horse products lends
 20 jurisdiction to the Southern District of California. Plaintiff must show Defendants
 21 expressly aimed their activities at California. This they have not done.

22 23 **2. Arising out of Forum-Related Activities**

24 "Specific personal jurisdiction requires a showing of forum-related activities
 25 of the defendant that are related to the claim asserted." *Carpenter v. Sikorsky*
 26 *Aircraft Corp.*, 101 F. Supp. 3d 911, 921 (C.D. Cal. 2015) (citing *Rano v. Sipra Press,*
 27 *Inc.*, 987 F.2d 580, 588 (9th Cir. 1993)). It is "confined to adjudication of issues
 28 deriving from, or connected with, the very controversy that establishes jurisdiction."

1 *Goodyear*, 131 S. Ct. at 2851 (internal quotation marks omitted).

2 In this case, Plaintiff has alleged Defendants made false statements on a
 3 Facebook page in Utah. The statements were about products Hegeman says she
 4 purchased in Utah. Plaintiff fails to show how these activities are forum-related
 5 activities. The fact that the damages may have been incurred in California is
 6 insufficient. *See Walden*, 134 S Ct. at 1125 (“The proper question is not where the
 7 plaintiff experienced a particular injury or effect but whether the defendant’s
 8 conduct connects him to the forum in a meaningful way.”).

10 **3. Reasonableness of Exercising Jurisdiction**

11 Although the Court finds that Plaintiff has failed to establish purposeful
 12 availment or forum-related activities, the Court nonetheless proceeds to the third
 13 prong and finds that Defendants have established that exercising jurisdiction over
 14 them would not be reasonable. To determine reasonableness of the forum, the Court
 15 must balance seven factors including: (1) the extent Defendants have purposefully
 16 injected themselves into the forum state; (2) the burden on Defendants of litigating
 17 in the forum state in light of the corresponding burden on the Plaintiff; (3) conflict
 18 with sovereignty of Defendants’ state; (4) forum state’s interest in adjudicating the
 19 suit; (5) most efficient judicial resolution; (6) convenience and effectiveness of relief
 20 for Plaintiff; and (7) existence of an alternative forum. *Sinatra v. National Enquirer,*
 21 *Inc.*, 854 F.2d 1191, 1198-99 (9th Cir. 1988).

22 The first prong has been discussed above. Defendants have not purposefully
 23 injected themselves into the forum state. Second, Defendants, as a pro per, one
 24 woman operation, would be greatly burdened if forced to litigate in California. To
 25 the contrary, Hegeman alleges, and Plaintiff does not dispute, that Professional’s
 26 Choice has sales outlets for their products throughout Utah, and that the three
 27 products she reviewed on Facebook were, in fact, purchased at one of these outlets
 28 in Utah. (ECF Nos. 11 ¶4; 6 ¶5.) The fact that Hegeman once lived in California

1 and may have a friend or distant relative with whom she could stay while litigating
2 the case is insufficient.

3 The Court recognizes that California has a strong interest in protecting the
4 rights of corporations incorporated and doing business in California. However, Utah
5 does provide an alternative forum, where Plaintiff can bring its Lanham Act claims
6 and defamation claims, requesting damages and other effective relief. The fact that
7 the remedies may be different or the penalties slightly less is not sufficient to tip the
8 balance in favor of exercising personal jurisdiction in this district.

9 Finally, the Court finds there are witnesses in both locations. Plaintiff alleges
10 Defendants made false statements about its products. Hegeman alleges she tested
11 the products (in Utah) and her testing supports her statements about the products.
12 Witnesses may include those who have manufactured the Professional Choice's
13 products (presumably in California), Hegeman who bought the products in Utah,
14 anyone who helped her test the products (also presumably in Utah) and any expert
15 witnesses who could be from anywhere. Thus, this Court finds this factor is neutral.


16 Ultimately, the first factor is the most significant. The fact that Hegeman did
17 not purposefully inject herself into California and is simply alleged to have posted
18 false information on a passive Facebook page in Utah renders jurisdiction over
19 Defendants in California unreasonable.

20
21 **IV. CONCLUSION**

22 For the foregoing reasons, Defendants' Motion to Dismiss for lack of personal
23 jurisdiction (ECF No. 6) is **GRANTED**.

24 **IT IS SO ORDERED.**

25
26 **DATED: April 12, 2016**

27 
28 **Hon. Cynthia Bashant**
United States District Judge